

228-07/WLJ  
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Attorneys for Plaintiff  
ESSAR INTERNATIONAL LIMITED  
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William L. Juska (WJ 0772)  
Manuel A. Molina (MM1017)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ESSAR INTERNATIONAL LIMITED,

Plaintiff,

-against-

**AFFIDAVIT OF  
MANUEL A. MOLINA.**

**07 Civ. 3439 (WHP)**

MARTRADE GULF LOGISTICS FZCO,

Defendant.  
-----X

State of New York     )  
                              ) ss.:  
County of New York    )

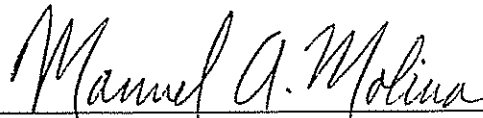
MANUEL A. MOLINA, being duly sworn, deposes and says as follows:

1. I am an associate with the law firm of Freehill Hogan & Mahar LLP, attorneys for plaintiff Essar International Limited ("ESSAR").

2. This Affidavit is submitted in further opposition to the Motion of Marlog-LBG Logistics GmbH ("MARLOG") to vacate a certain attachment of \$157,000 restrained by Deutsche Bank pursuant to the Process of Maritime Attachment and Garnishment issued in this action.

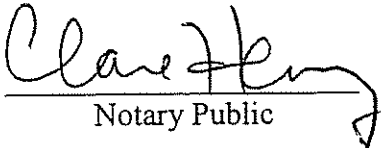
3. Attached hereto as Exhibit A is a copy of an Inchcape Shipping Services Invoice and Payment Order, which document was marked as Court Exhibit 1 at the July 6, 2007 hearing.

4. Attached hereto as Exhibit B is a copy of a decision of the Hon. Judge Loretta A. Preska in *Losinjka Plovidba v. Azelie Corp.*, No. 06-13627 (S.D.N.Y. Jan 29, 2007).



Manuel A. Molina (MM 1017)

Sworn to before me this  
11<sup>th</sup> day of July, 2007

  
Notary Public

**CLARE HENRY**  
Notary Public, State of New York  
No. 01HE4831488  
Qualified in Kings County  
Certificate in New York County  
Commission Expires October 31, 2008

## **EXHIBIT A**

to graeme lloyd of winter, london , copy: klaus maassen  
from martrade / uwe kornol

re:essar / lindos / arrest usd 157.000



Inchcape  
Shipping Services

enclosed please see payment-order from  
mgl-dubai / executed from marlog-account.

bst rgds uwe kornol duesseldorf, 8.6.07

Suez Canal Proforma Tolls

Name of Vessel	Grand Glory	Laden
Type	Bulk Carrier	SC ID No: 20903
SCNT	22574.84	

Tons/Item	Rate in SDR	Total SDR	US\$ Rate	Amt in US\$	Remarks
5000	7.65	38250	1.53		
5000	4.5	22500			
10000	3.4	34000			
20000	0	0			
30000	0	0			
2574.84	1.15	2961			
<b>Total Tolls</b>		97711		149,498	SCA circular 01/2003
<b>Additional Tolls</b>				0	
<b>Mooring &amp; Projector</b>				1,882	Canal Mooring and Lights Company
<b>Maritime Auth Fees</b>				900	Decree 332/03
<b>Port Utilisation fees</b>				250	US\$ 200 / 250
<b>Light dues Port Said</b>				1,179	5 cents per SCNT +USD 50 misc items
<b>Light dues Suez</b>				1,179	5 cents per SCNT +USD 50 misc items
<b>Port dues</b>				746	3 cents/SCNT +5% of invoice+USD 35 misc items
<b>Pilotage</b>				311	Port Tariff
<b>Seamens Club</b>				25	Decree 332/03
<b>Quarantine</b>				50	Port Tariff
<b>Customs</b>				20	Port Tariff
<b>Port Police dues</b>				25	
<b>ISS Agency Fees</b>				900	Agency Fee
<b>Agency charges</b>				200	Lumpsum charge to include all items like Garbage, Bank charges, overtime etc
<b>Total to be remitted</b>			US\$	157165	

Note: Latest USD/SDR rate can be obtained from [www.imf.org](http://www.imf.org)

Contacts:

Tel Off: +202 22683852

Fax: +202 22683850

Email:

Operations [iss.eqvpt@iss-shipping.com](mailto:iss.eqvpt@iss-shipping.com)

Management [ashok.k@iss-shipping.com](mailto:ashok.k@iss-shipping.com)

POC and AOH Numbers Ashok Kumar, Gen Mgr Mobile: +2012 313 0669 Res: +202 5196698  
Nabil: Ops Mgr Mobile: +2012 3280372 Res: +202 6070555

Bankers Full Style for Remittance of funds:

Commercial International Bank, Port Said Branch, Egypt

Favouring Inchcape Shipping Services, Acc No 0250307451

Under tested telex to Commercial International Bank, Port Said Tlx No 63196 CNPS UN.

SWIFT CODE: CIBEEGXX002

Inchcape Port Said - Payment advise

## PAYMENT ORDER

Payee	: Martrade Gulf Logistics FZCO		
Ammount	: USD 157,165.00		
Bank of Beneficiary	: COMMERCIAL INTERNATIONAL BANK, PORT SAID BRANCH, EGYPT F/O INCHCAPE SHIPPING SERVICES PORT SAID SWIFT: CIB EEG CXE 002		
Beneficiary	: INCHCAPE SHIPPING SERVICES		
Town	: PORT SAID		
Country	: EGYPT		
Account No.	: 025 030 7451		
Refference	: MV.GRAND GLORY PDA SUEZ	Voy	7807 \$ 157,165.00
To be paid on	: 01.06.2007		
Prepared by	: Krishnan 01.06.2007		

## **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

LOSINJKA PLOVIDBA,

Plaintiff,

v.

06 CV 13627 (LAP)

AZELIE CORPORATION and  
CARGOBULK PTE LTD.,

Defendants.

-----X

January 29, 2007  
5:40 p.m.

Before:

HON. LORETTA A. PRESKA

District Judge

APPEARANCES

FREEHILL HOGAN & MAHAR  
Attorneys for Plaintiff  
BY: MICHAEL E. UNGER  
LAWRENCE J. KAHN

DeORCHIS, WIENER & PARTNERS LLP  
Attorneys for Defendant Cargobulk  
BY: CHRISTOPHER H. MANSUY

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(In open court; discussion held off the record)  
THE COURT: Counsel are here today for the second  
round of argument on an attachment effected in early December.  
The first question on the table was whether Azelie has a  
property interest in the attached funds. It seems pretty clear  
that Azelie chartered the M/V EBER from Sohtorik. The  
agreement between those two parties required that payments made  
by Azelie be made to Hellas. By December 5, 2006, Azelie had a  
debt to Sohtorik for, among other things, charter hire for the  
M/V EBER in the amount of some \$403,000. Azelie instructed  
Cargobulk, or Cargobulk was otherwise obligated by some  
agreement with Azelie, to pay Hellas the \$403,000 in

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13 satisfaction of Azelie's debt to Sohtorik. As those funds were  
 14 transferred, that money transfer was captured pursuant to the  
 15 order in this action. The question on the table, as I  
 16 mentioned, is whether or not Azelie has a property interest in  
 17 those funds.

18 Here, it's clear first of all that under the rule,  
 19 property interests attachable have been very broadly defined.  
 20 It is also clear that in this circuit, electronic funds  
 21 transfers to or from a party are attachable as they pass  
 22 through the banks located in the court's jurisdiction. Here,  
 23 the undisputed fact that the payment was made on behalf of  
 24 Azelie by Cargobulk seems to represent a sufficient property  
 25 interest to be attached within the meaning of the rule and some

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1 of the cases from this district, for example, Hamburg Bulk  
 2 Carriers v. Proteinas y Oleicos, 2005 U.S. Dist. LEXIS 8009  
 3 (S.D.N.Y., May 4, 2005); Engineering Equipment Co. v. S.S.  
 4 SELENE, 446 F.Supp. 706 (S.D.N.Y. 1978). Accordingly, I find  
 5 that Azelie had a property interest that could properly have  
 6 been attached in the funds.

7 In addition, counsel argue about whether or not  
 8 plaintiff has made a prima facie showing sufficient to  
 9 demonstrate that -- off the record.

10 (Discussion held off the record)

11 THE COURT: Cargobulk is the alter ego of Azelie.  
 12 Counsel have cited particularly to Ulisses Shipping Corp. v.  
 13 FAL Shipping Co. Ltd., 415 F.Supp.2d 318, 322-23 (S.D.N.Y.  
 14 2006), and there, the court held that at a post-attachment  
 15 hearing, a plaintiff asserting corporate alter egos need not  
 16 definitively establish dominion and control but must present  
 17 enough evidence to convince the court that there are reasonable  
 18 grounds for piercing the corporate veil. In that case, the  
 19 Court relied on a showing that one entity paid the debts of the  
 20 other and the two entities had overlapping ownership,  
 21 management, and purposes. Here, we have a similar showing as  
 22 between Azelie and Cargobulk. Indeed, much of the overlap is  
 23 admitted in Mr. Wong Kim Sen's declaration. There is no  
 24 question here but that the \$403,000 payment was attempted by  
 25 Cargobulk on behalf of Azelie.

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1 It also appears from the walters declaration that  
 2 Azelie has no actual existence but is a corporate shell and has  
 3 capitalization of one Singapore dollar, or approximately 65  
 4 cents.

5 off the record.

6 (Discussion held off the record)

7 THE COURT: In addition, Mr. Wong points out in  
 8 paragraph 12 of his deposition, for example, that Cargobulk as  
 9 managers and agents of Azelie will make advance payments on  
 10 behalf of and on instructions from Azelie. And he goes on to  
 11 say that Azelie will thereafter repay and reimburse cargo bulk.  
 12 However, there does not appear to be any evidence of that.

13 Given the undisputed facts of interlocking ownership,  
 14 common management, and the payment of debts on behalf of  
 15 Azelie, plaintiff at this point has made a prima facie showing  
 16 of an alter ego situation sufficient to demonstrate reasonable  
 17 grounds for piercing the corporate veil. Accordingly, the



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18 attachment will be continued.  
19 Counsel, would you confer and let me know within the  
20 week how you would like to proceed.  
21 MR. UNGER: Will do, your Honor.  
22 THE COURT: Anything else today?  
23 MR. MANSUY: Yes, your Honor.  
24 THE COURT: Yes, sir.  
25 MR. MANSUY: I'm still not clear which way the alter  
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1 ego goes. If Cargobulk is the alter ego of Azelie, then  
2 Cargobulk capitalization is irrelevant, I think.  
3 THE COURT: It is Azelie's capitalization that was at  
4 65 cents.  
5 MR. MANSUY: Walters was observing something about  
6 Cargobulk's capitalization.  
7 THE COURT: All right. Let me find him.  
8 MR. UNGER: That is correct, your Honor. Mr. Walters  
9 was making that observation on the part of Cargobulk.  
10 THE COURT: Well, let me just say this, counsel.  
11 Nevertheless, the material in Mr. Walters' declaration, for  
12 example, paragraph 11, all of Azelie's activities appear to be  
13 controlled on a day-to-day basis through Cargobulk in Singapore  
14 or through others of its offices. He goes on to give some  
15 detail there. But it does seem to me that there is certainly a  
16 prima facie showing of alter ego at this point in time.  
17 MR. MANSUY: Well, there is no suggestion, and indeed  
18 the management agreement says, that Cargobulk will manage the  
19 affairs of Azelie. That's not a mystery. The question is  
20 whether that is then enough to say that Cargobulk is  
21 responsible for the debts of Azelie, which is what they are  
22 alleging.  
23 THE COURT: Yes, sir. Mr. Walters' detail does seem  
24 to provide enough information for a prima facie showing.  
25 Obviously that's not a finding at this point.  
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1 MR. MANSUY: OK. And I believe your Honor also  
2 mentioned that there was no evidence of remittance, I think you  
3 said there was no evidence of remittance.  
4 THE COURT: Right. I was referring to Mr. Wong's  
5 affidavit, sir.  
6 MR. MANSUY: Right. There is attached, the fifth page  
7 of Exhibit 5, the sixth page of Exhibit 5 is an e-mail  
8 reflecting the transfer of a substantial amount of money,  
9 reflecting charter payments due on other unrelated vessels.  
10 THE COURT: The fifth or the sixth? I'm sorry.  
11 MR. MANSUY: It's two pages. One, the first page, is  
12 an e-mail dated December 1, 2006, from Cargobulk to Azelie.  
13 THE COURT: Of Exhibit 5.  
14 MR. MANSUY: Yes, to the Wong affidavit. The last  
15 exhibit is Exhibit 6. That's two pages.  
16 THE COURT: Yes, sir.  
17 MR. MANSUY: And then the --  
18 THE COURT: The one before it is 5.  
19 MR. MANSUY: Right. And the last two pages of Exhibit  
20 5 reflect the transfer.  
21 THE COURT: Yes, sir. December 1, 2006.  
22 MR. MANSUY: That's memorializing the transfer from

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23 Azelie to Cargobulk. And the details are shown on the  
24 following page.

25 THE COURT: Yes, sir. I stand corrected. There is  
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1 some indication of reimbursement.

2 Anything else to add?

3 MR. MANSUY: Just a question, your Honor. I take it  
4 from the decision you've rendered that you consider the  
5 argument with regard to the plaintiff's burden of showing some  
6 element of fraud as a nonstarter.

7 THE COURT: I do understand that to be based primarily  
8 in the state law and not the federal common law. However, if  
9 we were going to pursue that, it does seem that the course of  
10 negotiations set out in Mr. Magas' declaration certainly shows  
11 reliance on Cargobulk and Azelie, and their agreements to pay.  
12 In particular he discusses the need to move the perishable  
13 cargo. He notes that the individuals confirmed that they were  
14 negotiating on behalf of Azelie except for, in his declaration,  
15 Mr. Wong says that he's a Cargobulk employee. It's clear from  
16 the course of the negotiations, plaintiff's reliance on both  
17 Azelie and Cargobulk for payment, the necessity of having all  
18 three parties together to minimize damage, and finally the  
19 conclusion in paragraphs 24 and 25. So to the extent that that  
20 additional requirement is necessary, it does seem to have been  
21 met at least on a prima facie basis here.

22 Anything else, gents?

23 MR. MANSUY: I would just like you to note, your  
24 Honor, that in paragraph 14, Mr. Magas is actually talking of  
25 the three people, as I understand it, the plaintiff, its time  
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1 charterer, Cross world, and Azelie as Cross world's  
2 subcharterer.

3 THE COURT: 13 or 14, sir?

4 MR. MANSUY: Yes, your Honor.

5 THE COURT: 13 or 14 are you referring to?

6 MR. MANSUY: I'm sorry. 14. I believe that that is  
7 the triangle that he is speaking of.

8 THE COURT: well, certainly Cross world is involved.  
9 But at least as represented by Mr. Magas, the authorization was  
10 both to Azelie and Cargobulk to pay the amount owed directly to  
11 plaintiff.

12 MR. MANSUY: well, there's no evidence in any of the  
13 exhibits to his declaration of that fact, your Honor.

14 THE COURT: All right, sir.

15 All right, gentlemen. I'll look for your letter  
16 within the week if you would, please.

17 MR. UNGER: Yes, your Honor.

18 MR. MANSUY: Your Honor, one thing. Mr. Wong is out  
19 of Singapore, and I had some difficulty contacting him. I will  
20 try to impress upon everybody in their office to get ahold of  
21 him.

22 THE COURT: If you need more time, tell me. I know  
23 how difficult it is to confer with those folks 12 hours off.

24 Thank you gentlemen.

25

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